

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	Case No. 13-cv-2210
Plaintiff,)	
)	COMPLAINT
v.)	
)	
LYNDA L. KILBURN; DISCOVER BANK;)	
FIA CARD SERVICES, N.A.; and MIDLAND)	
FUNDING, LLC,)	
)	
Defendants.)	
_____)	

The United States of America brings this action: (1) to reduce federal tax assessments against Defendant Lynda L. Kilburn for the tax years 1997, 1999, 2000, 2001, 2002, 2003, 2006, 2008, and 2009 to judgment; (2) to foreclose federal tax liens on real property located in King County, Washington; and (3) to obtain a sale of such property.

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COMPLAINT
(Case No. 13-cv-2210)

U.S. DEPARTMENT OF JUSTICE
Tax Division, Western Region
P.O. Box 683, Ben Franklin Station
Washington, D.C. 20044
Telephone: 202-307-6322

JURISDICTION

1
2 1. The United States of America brings this suit pursuant to 26 U.S.C. §§ 7401 and
3 7403, at the direction of the Attorney General of the United States, with the authorization and
4 sanction of, and at the request of, the Secretary of the Treasury.

5 2. This Court has jurisdiction pursuant to 26 U.S.C. § 7402 and 28 U.S.C. §§ 1331,
6 1340, and 1345 because this action arises under federal tax law, and the United States is the
7 plaintiff.

8 3. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and 1396 because Defendant
9 Lynda L. Kilburn resides in King County, Washington, and because the property subject to this
10 action is located in King County, Washington.

THE SUBJECT PROPERTY

11
12 4. Defendant Lynda L. Kilburn obtained an interest in certain real property located
13 at 4807 E. Mercer Way, Mercer Island, Washington, by Statutory Warranty Deed dated June 14,
14 1977 and recorded with the King County Recorder on June 20, 1977, recording number
15 197706200074, which conveyed the real property from John Baumann and Cynthia Baumann to
16 Peter V. Kilburn and Lynda L. Kilburn. Defendant Lynda L. Kilburn further obtained an interest
17 in the real property located at 4807 E. Mercer Way, Mercer Island, Washington, by Quitclaim
18 Deed from Peter V. Kilburn to Lynda L. Kilburn dated June 1, 1993 and recorded with the King
19 County Recorder on September 23, 1991, recording number 199109231372. The real property is
20 more particularly described as follows:

21 Lot 2, East Mercer Highlands, according to the plat thereof recorded in Volume
22 74 of Plats, pages 83-84, in King County, Washington.

23 SUBJECT TO Easements, restrictions and reservations of record, if any.

1 (Hereafter, the "Subject Real Property").

2 **IDENTIFICATION OF DEFENDANTS**

3 5. Defendant Lynda L. Kilburn resides in King County, Washington, within the
4 jurisdiction of this Court, and is named as a defendant because she owes the unpaid federal
5 income tax liabilities that are the subject of this action.

6 6. Defendant Discover Bank regularly transacts business in King County,
7 Washington, within the jurisdiction of this Court, and is named as a defendant because it may
8 claim an interest in the Subject Real Property.

9 7. Defendant FIA Card Services, N.A. regularly transacts business in King County,
10 Washington, within the jurisdiction of this Court, and is named as a defendant because it may
11 claim an interest in the Subject Real Property.

12 8. Defendant Midland Funding, LLC regularly transacts business in King County,
13 Washington, within the jurisdiction of this Court, and is named as a defendant because it may
14 claim an interest in the Subject Real Property.

15 **GENERAL ALLEGATIONS**

16 9. Upon information and belief, on May 24, 2013, Defendant Discover Bank
17 obtained a judgment against Defendant Lynda L. Kilburn in the amount of \$16,914.33.

18 10. Upon information and belief, Defendant Discover Bank recorded the judgment
19 against Defendant Lynda L. Kilburn described in paragraph 9, above, with the King County
20 Auditor on June 17, 2013, instrument number 20130617000628.

21 11. Upon information and belief, on January 30, 2013, Defendant FIA Card Services,
22 N.A. obtained a judgment against Defendant Lynda L. Kilburn in the amount of \$45,057.05.

12. Upon information and belief, Defendant FIA Card Services, N.A. did not record the judgment described in paragraph 11, above.

13. Upon information and belief, Defendant FIA Card Services, N.A. transferred the judgment described in paragraph 11, above, to Defendant Midland Funding, LLC.

14. Upon information and belief, Defendant Midland Funding, LLC recorded the judgment against Defendant Lynda L. Kilburn described in paragraph 11, above, with the King County Auditor on November 14, 2013, instrument number 20131114001020.

FIRST CLAIM FOR RELIEF:

REDUCE FEDERAL TAX ASSESSMENTS TO JUDGMENT

15. The United States reasserts the allegations made in paragraphs one (1) through fourteen (14) above, as if fully set forth herein.

16. On the following dates, in the amounts and for the tax periods set forth below, a duly authorized delegate of the Secretary of the Treasury made timely assessments against Defendant Lynda L. Kilburn for unpaid federal income taxes, penalties, interest, and other statutory additions accruing thereto based upon income tax returns filed by Defendant Lynda L. Kilburn as follows:

<u>Tax Type</u>	<u>Tax Year</u>	<u>Assessments</u>	<u>Assessment Date</u>	<u>Unpaid Assessed Balance* as of 12/16/2013</u>	<u>Accrued but Unassessed Penalties and Interest as of 12/16/2013</u>	<u>Unpaid Balance* as of 12/16/2013</u>
1040	1997	FTP ¹ \$1,202.48	10/02/2000	\$35,957.21	\$39,825.47	\$75,782.68

¹ T—tax assessed; LFP—late filing penalty, 26 U.S.C. § 6651(a)(1); I—interest; F—fees and collection costs; FTP—failure to pay tax penalty, 26 U.S.C. § 6651(a)(2)

		T	\$24,753.38	10/02/2000			
		LFP	\$5,119.51	10/02/2000			
		FTP	\$3,048.27	10/02/2000			
		I	\$5,921.28	10/02/2000			
		FTP	\$2,640.08	11/13/2006			
1040	1999	FTP	\$656.12	09/25/2000	\$148,964.30	\$144,260.78	\$293,225.08
		T	\$43,776.00	09/25/2000			
		I	\$929.30	09/25/2000			
		ARP	\$17,816.00	06/24/2002			
		T	\$89,080.00	06/24/2002			
		FTP	\$25,614.88	11/13/2006			
1040	2000	FTP	\$2,113.00	06/04/2001	\$16,214.42	\$14,289.00	\$30,503.42
		T	\$39,279.00	06/04/2001			
		I	\$143.85	06/04/2001			
		I	\$178.57	08/06/2001			
1040	2001	FTP	\$1,055.36	07/08/2002	\$12,456.25	\$8,868.69	\$21,324.94
		T	\$27,175.00	07/08/2002			
		ARP	\$1,566.00	05/17/2004			
		T	\$8,049.00	05/17/2004			
		FTP	\$2,012.25	11/12/2007			
1040	2002	FTP	\$756.00	09/29/2003	\$10,712.46	\$6,090.89	\$16,803.35
		T	\$22,625.00	09/29/2003			
		FTP	\$328.75	09/29/2003			
		I	\$261.22	09/29/2003			
		FTP	\$1,677.49	11/15/2010			
		F	\$64.00	08/19/2013			
1040	2003	FTP	\$632.80	06/07/2004	\$39,514.00	\$23,385.89	\$62,899.89
		T	\$24,526.00	06/07/2004			
		FTP	\$145.26	06/07/2004			
		I	\$105.55	06/07/2004			
		ARP	\$3,534.00	11/07/2005			
		T	\$17,787.00	11/07/2005			
		FTP	\$7,903.73	11/15/2010			
1040	2006	FTP	\$714.92	09/01/2008	\$12,272.39	\$2,439.16	\$14,711.55
		T	\$49,169.42	09/01/2008			
		LFP	\$1,466.48	09/01/2008			
		I	\$841.47	09/01/2008			
		F	\$84.00	02/09/2009			
		FTP	\$1,833.10	11/15/2010			
1040	2008	FTP	\$1,410.18	11/23/2009	\$6,304.01	\$888.01	\$7,192.02
		T	\$60,614.00	11/23/2009			
		FTP	\$561.15	11/23/2009			
		I	\$372.35	11/23/2009			
		FTP	\$327.30	11/15/2010			
		FTP	\$360.03	11/14/2011			

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1040	2009	FTP	\$1,049.00	01/10/2011	\$62,299.29	\$5,707.30	\$68,006.59
		T	\$47,886.88	01/10/2011			
		FTP	\$1,971.31	01/10/2011			
		I	\$1,424.50	01/10/2011			
		FTP	\$4,330.22	11/14/2011			
		FTP	\$5,527.38	11/12/2012			
		F	\$110.00	02/25/2013			
				Outstanding total* as of 12/16/2013			\$590,449.52

* Including accrued but unassessed interest and statutory additions, minus payments made, through December 16, 2013.

17. Despite timely notice and demand for payment of the assessments described in paragraph 16 above, Defendant Lynda L. Kilburn has neglected, failed or refused to fully pay the assessments made against her.

18. Since the dates of the assessments described in paragraph 16 above, interest, penalties and statutory additions have accrued and will continue to accrue as provided by law. Collections have also been made and applied to this liability. As of December 16, 2013, Defendant Lynda L. Kilburn owes the United States \$590,449.52 for the assessments made against her described in paragraph 16 above.

19. Absent some event that suspends the statute of limitations, the collection statute of limitations would normally expire ten years following the date of an assessment. *See* 26 U.S.C. § 6502. As a result, the earliest collection statute of limitations for the tax years 1997, 1999, 2000, 2001, 2002, and 2003 would have expired as early as September 25, 2010, ten years from the date of the first assessment for the tax periods at issue.

20. The statute of limitations is suspended during periods during which there is an offer to enter into an installment agreement pending between a taxpayer and the Internal Revenue Service, and also for thirty days following the rejection or termination of such agreement. *See* 26 U.S.C. §§ 6502(a)(2); 6331(k).

21. On or around August 1, 2005, Defendant Lynda L. Kilburn proposed that she enter an installment agreement with the Internal Revenue Service to pay the outstanding liabilities for the tax years 1996, 1997, 1999, 2000, 2001, 2002, and 2003. The Internal Revenue Service accepted the proposed installment agreement for processing on August 1, 2005, and it was deemed pending as of that date. On December 26, 2008, the Internal Revenue Service denied Defendant Lynda L. Kilburn's proposed installment agreement. The applicable periods of limitation on collection were therefore suspended for the period during which the offer to enter into an installment agreement was suspended, for a total of 1,243 days. *See* 26 U.S.C. § 6331(k).

22. As a result of the proposed installment agreements described in paragraph 15 above, the collection statute of limitations on the tax years 1996, 1997, 1999, 2000, 2001, 2002, and 2003 was suspended for 1,243 days during the period in which the installment agreement had been proposed and was pending with the Internal Revenue Service for acceptance, and for 30 days after the rejection of the agreement by the IRS. *See* 26 U.S.C. § 6331(k). As a result, the collection statute of limitations on the tax years 1997, 1999, 2000, 2001, 2002, and 2003 were suspended from August 1, 2005, for a total of 1,273 days, and therefore, the collection statute of limitations for the tax assessments described in paragraph 16 above would not expire until March 21, 2014, at the earliest.

SECOND CLAIM FOR RELIEF:

FORECLOSE FEDERAL TAX LIENS AGAINST THE SUBJECT PROPERTY

23. The United States reasserts the allegations made in paragraphs one (1) through twenty-two (22) above, as if fully set forth herein.

24. The United States recorded notices of federal tax liens for the following periods with the King County Auditor on the following dates:

Tax Type	Tax Period(s)	Recording Date	Refiling Date
1040	1997, 1999, 2000	08/21/2013	
1040	2001, 2002, 2003	08/19/2005	07/29/2013
1040	2006	01/13/2009	
1040	2008	04/30/2010	
1040	2009, 2011	02/07/2013	

25. The United States recorded notices of federal tax liens for the following periods with the Department of Licensing of the State of Washington on the following dates:

Tax Type	Tax Period(s)	Recording Date
1040	2009, 2011	02/04/2013
1040	1997, 1999, 2000, 2001, 2002, 2003, 2006, 2008	04/05/2013

26. Pursuant to 26 U.S.C. §§ 6321 and 6322, liens arose on the assessment dates shown on the tables in paragraph 16 in favor of the United States against all property and rights to property belonging to Defendant Lynda L. Kilburn. The United States perfected these lien interests by filing notice of its tax liens in the King County Auditor real property records, as described in paragraph 24, above. The limitations period for collection of all the tax liabilities shown in paragraph 16, above, is open.

27. The United States' tax liens attach to the interests in the Subject Real Property held by Defendant Lynda L. Kilburn.

28. Pursuant to 26 U.S.C. § 7403, the United States may enforce its tax liens by foreclosing upon and selling the Subject Real Property.

WHEREFORE, the United States respectfully requests that the Court enter an order in favor of the United States and against Defendant Lynda L. Kilburn as follows:

- A. That this Court determine and adjudge that Lynda L. Kilburn is indebted to the United States, as of December 16, 2013, in the amount of \$590,449.52, plus statutory accruals thereafter, for the federal tax liabilities for the tax years 1997, 1999, 2000,

- 1 2001, 2002, 2003, 2006, 2008, and 2009, plus interest and other statutory additions as
2 provided by law;
- 3 B. That the United States has a perfected lien interest in all property and rights to
4 property belonging to Defendant Lynda L. Kilburn, including the Subject Real
5 Property described in paragraph 4, above, as of the assessment date or acquired
6 thereafter;
- 7 C. That the United States may foreclose its federal tax liens and judgment liens against
8 the Subject Real Property described in paragraph 4, above;
- 9 D. That the Subject Real Property described in paragraph 4, above, shall be sold, and
10 that the proceeds of this sale shall be applied to Defendant Lynda L. Kilburn's federal
11 income tax liabilities;
- 12 E. That this Court determine the validity and priority of all liens on and other interests in
13 the Subject Real Property described in paragraph 4, above, and order that the
14 proceeds from any judicial sale of such property be distributed accordingly; and
- 15 F. That the Court award the United States all other just and proper relief.

16 Respectfully submitted this 11th day of December, 2013.

17 KATHRYN KENEALLY
18 Assistant Attorney General
19 /s/ Richard A. Schwartz
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